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IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UTAH COUNTY.

PROVO RESERVOIR COMPANY, a
corporation,

NO. 2888.

Plaintiff.

-vs-

REPLY TO ANSWER AND COUNTER
CLAIM OF PROVO BENCH CANAL
AND IRRIGATION COMPANY.

PROVO CITY, a municipal
corporation, et al, including
Provo Bench Canal & Irrigation
Company,

Defendants

Now comes the plaintiff and in reply to the affirmative allegations of the answer and to the counter claim of the defendant Provo Bench Canal and Irrigation Company, admits, denies and alleges as follows,-

1.

Plaintiff admits that said defendant is now and was at all the times mentioned in the pleadings herein, a corporation organized and existing under the laws of Utah, for the purpose of constructing and maintaining a canal and conveying water of the Provo river to and upon the lands of Provo Bench lying westerly from the mouth of Provo Canyon and to regulate and control the same for beneficial use, and that Provo river is a natural stream of water with its main sources in Wasatch and Summit Counties with tributaries having their sources in Utah County, and that said river runs through what is known as Provo canyon and that the waters thereof when not intercepted discharge into Utah Lake, Utah County, Utah.

2.

Plaintiff admits that prior to the time when the plaintiff and its predecessors in interest had acquired any rights to the use of the water in the Provo river, the said defendant had constructed its canal, the intake of which is as stated in its answer herein, through

which it diverted water from the said Provo river to lands of its stockholders on the Provo Bench lying westerly of the mouth of Provo canyon, for ^{the} purpose of irrigating said lands and for other beneficial uses, and that said canal when completed had a carrying capacity of not to exceed 125 cubic feet of water per second of time, and that the length of said canal from its intake to its terminus is a distance of about 8 miles, and that ever since the construction of said canal the said defendant has, during the high or flood water season of each and every year, diverted a sufficient quantity of water from the Provo river into its said canal to fill it to its capacity and that a portion of the waters so diverted by said defendant have been used upon the lands of its stockholders and others entitled to the use thereof, for purposes of irrigation, to an amount of not to exceed in the aggregate 4,332 acres.

3.

Plaintiff admits that there is lying under the canal of the defendants, 6500 acres of land that might be irrigated from said canal, but denies that the said defendant, its stockholders and others having a right to the use of water from the said canal have at any time during any year, irrigated lands by the waters flowing through said canal exceeding 4,332 acres, and denies that the said defendant or its stockholders or the owners of lands lying under its said canal have ever at any time acquired a right to the use of waters from the Provo river to be conveyed through said canal to irrigate lands in excess of 4,332 acres, and denies that the said corporation, its stockholders and those owning lands lying under the said canal, have ever used water upon any of said lands exceeding in the aggregate 4,332 acres, and denies that any of the lands lying under said canal in excess of 4,332 acres are now or have been ~~in~~ dependent upon said canal and the waters flowing therein for the irrigation thereof.

4.

Plaintiff admits that all of the lands lying under said canal both irrigated and unirrigated are barren and unproductive without irrigation, and that with irrigation they may be made productive of large agricultural and horticultural crops.

5.

Plaintiff admits that the defendant has at all times since the construction of its canal filled the said canal to its capacity with water from the Provo river during such times as it was able to secure water therefor without depriving others having equal rights with the defendant, to the use thereof, of waters to which they were entitled, and plaintiff admits that during the low water season of each and every year since the construction of its canal, the defendant has been unable to obtain sufficient water from the said Provo river to fill its canal at the intake to its capacity, without depriving others, having an equal right with the defendant to the use of the waters of said river, of water to which such others were entitled, and defendant admits that during the low water season of some years since the construction of the defendant's canal it has been unable to secure from the said river, sufficient water to properly irrigated during the month of August and a portion of the month of September, all of ~~the~~ the lands of its stockholders and others having a right to the use of waters through the said canal; but plaintiff alleges that during the irrigation season of each and every year up to on ~~at~~ or about July 10th, the defendant has diverted water into its said canal from said river to the capacity of said canal.

6.

Plaintiff admits that the Provo river runs through what is commonly called Provo Valley in Wasatch County, Utah, and that said valley is at a higher elevation than the intake of defendant's canal and that large quantities of the water of said Provo river have been during the irrigation season of each and every year for more than 35

years, diverted and applied for irrigation purposes upon the lands in said valley, and that by reason thereof some additional water is flowing in the said river at the mouth of Provo canyon above the intake of the defendant's canal during the month of August and until the 15th day of September in each year, the amount of such increase being unknown to plaintiff.

7. 7.

Plaintiff denies that the defendant is entitled to the use of 140 cubic feet of water per second from Provo river at any time during any season of any year, and denies that it is entitled to any other or greater quantity of water than sufficient to irrigate 4332 acres of the lands lying below its canal; and plaintiff alleges upon information and belief that a cubic foot of water per second measured at the intake of plaintiff's said canal, is sufficient to irrigate 70 acres of the said land, and that the aggregate quantity of water necessary for the beneficial irrigation of all the lands of plaintiff its stockholders and other entitled to the use of water therefor, through the defendants canal, does not exceed 62 cubic feet per second.

8.

Plaintiff admits that it has for the past three years, during the high water period of each year, diverted at the intake of its canal as shown in the complaint herein, and used for necessary and beneficial uses 150 second feet of natural flow of the water of said river, and sufficient of the surplus water of said river to fill its several reservoirs near the head waters of the main channel of said river to their several capacities during each of said years, and that it will continue so to do unless restrained by order of this court, and plaintiff alleges that during each and every year up to July 10th which is the high water period, there has been a surplus of water in said river over and above all completed appropriations, and over and above the capacity of all canals and ditches diverting water therefrom, and alleges that during the time between October 15th and the

1st day of the following April of each and every year, all of the water of said river at the mouth of Provo canyon, except about 100 second feet, has been and now is unappropriated surplus water, and that the quantity of said surplus is approximately 250 second feet.

9.

Plaintiff admits that prior to A. D. 1910, the water-right decreed to the "William Wright Estate," as stated in the complaint, and in paragraph 8 of the counter claim herein was used upon lands adjacent to the Provo river and being above the intake of defendants canal, and that plaintiff has changed and intends to continue to change the place of diversion of said water, to the intake of plaintiff's canal as described in its complaint, unless restrained from so doing by order of this Court.

10.

Plaintiff admits that it has during each of the past three years, diverted, and by dam held in its reservoirs near the headwaters of said river, sufficient of the surplus waters thereof to fill said reservoirs, and that it will continue so to do unless restrained by order of the court, and admits that some of the waters so held by plaintiff has been during the months of May and June of each of said years.

11.

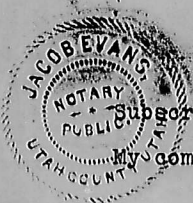
Plaintiff generally denies each and every allegation of said answer and counter-claim not hereinabove admitted.

WHEREFORE plaintiff demands judgment against the said several defendants in accordance with the prayer of its complaint.

Alfred H. Jones
Attorneys for Plaintiff.

STATE OF UTAH,
County of Utah) SS.

R J Muddock being first duly sworn says, that he is an officer of the plaintiff Provo Reservoir Company, a corporation, to-wit the Secretary thereof, that he has read the foregoing reply and knows the contents thereof and that the same is true of his own knowledge except as to those matters therein stated on information and belief and that as to those matters he verily believes it to be true, and that he makes this verification for and in behalf of the plaintiff corporation.



R J Muddock

Subscribed and sworn to before me this the 4th day of April, 1914.
My commission expires on the 2nd day of Sept 1917.

Jacob Evans
Notary Public.

Due sworn of copy of the above
and foregoing reply admitted this
4th day of May A.D. 1914

J. M. White
one of the atts for SEPT.
Provo Beach Canal & Irrigation Co.

2888

Prosser & Son Company
vs
P.H.

Prosser & Son
Sept 6

Reply of Plaintiff
to the answer
and Counterclaim
of the defendant
Prosser & Son Canal
and Irrigation Co.

AT PROVO CITY, UTAH

FILED
MAY 4 1914
FILED

J. R. Johnson CLERK
B. C. Raylance DEPUTY